Supreme Court, U.S.
FILED
97 643 OCT 10 1997
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

OCTOBER TERM, 1997

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

SETH P. WAXMAN
Acting Solicitor General
JOHN C. KEENEY
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

39 pp

QUESTION PRESENTED

Whether venue in a prosecution for money laundering under 18 U.S.C. 1956 and 1957 is proper in the district where the illicit funds were generated, when the defendant's unlawful financial transactions occurred in another district.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Constitutional and statutory provisions and rule involved	2
Statement	4
Reasons for granting the petition	9
Conclusion	14
Appendix A	1a
Appendix B	10a
Appendix C	13a
Appendix D	17a
Appendix E	21a

TABLE OF AUTHORITIES

Cases:

Travis v. *United States*, 364 U.S. 631 (1961)	14
United States v. *Anderson*, 328 U.S. 699 (1946)	9
United States v. *Angotti*, 105 F.3d 539 (9th Cir. 1997)	10, 12
United States v. *Bascope-Zurita*, 68 F.3d 1057 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996)	6
United States v. *Beddow*, 957 F.2d 1330 (6th Cir. 1992)	7, 8, 10, 11, 12
United States v. *Heaps*, 39 F.3d 479 (4th Cir. 1994)	10, 12, 13
United States v. *Lombardo*, 241 U.S. 73 (1916)	9
United States v. *Meyers*, 847 F.2d 1408 (9th Cir. 1988)	13
United States v. *Sax*, 39 F.3d 1380 (7th Cir. 1994)	8, 10, 12
United States v. *Smith*, 918 F.2d 1551 (11th Cir. 1990)	13

Cases—Continued: Page

United States v. *Uribe*, 890 F.2d 554 (1st Cir. 1989) 13

Constitution, statutes and rule:

U.S. Const.:
Art. III:
§ 2, cl. 3 2
Amend. VI 2
18 U.S.C. 371 ..... 4, 13
18 U.S.C. 1956 ..... 5, 9, 12
18 U.S.C. 1956(a)(1) 2, 5, 12
18 U.S.C. 1956(a)(1)(B)(ii) 4, 5
18 U.S.C. 1956(a)(2)(B) 11
18 U.S.C. 1956(c)(7) 5
18 U.S.C. 1956(c)(7)(B)(i) 5
18 U.S.C. 1957 ..... 4, 5, 9, 12
18 U.S.C. 1957(a) 3, 5, 12
18 U.S.C. 1957(f)(3) 5
18 U.S.C. 3237(a) 3
Fed. R. Crim. P. 18 4

In the Supreme Court of the United States

OCTOBER TERM, 1997

No.

UNITED STATES OF AMERICA, PETITIONER

v.

VICKIE S. CABRALES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

The Acting Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-9a) is reported at 109 F.3d 471. The order of the district court (App., *infra*, 10a-12a) is unreported. The report, recommendation and order of the magistrate (App., *infra*, 13a-16a) is unreported.

JURISDICTION

The court of appeals entered its judgment on March 24, 1997. A petition for rehearing was denied on June 12, 1997. App., *infra*, 21a. On September 5, 1997, Justice Thomas extended the time for filing a petition

for a writ of certiorari to and including October 10, 1997. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS AND RULE INVOLVED

1. Article III, Section 2, Clause 3 of the United States Constitution provides as follows:

> The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

2. The Sixth Amendment to the United States Constitution provides as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

3. Section 1956(a)(1) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction

> which in fact involves the proceeds of specified unlawful activity—
>
> * * * * *
>
> (B) knowing that the transaction is designed in whole or in part —
>
> * * * * *
>
> (ii) to avoid a transaction reporting requirement under State or Federal law,
>
> shall be sentenced to a fine of not more than $500,000 or twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than twenty years, or both.

4. Section 1957(a) of Title 18, United States Code, provides in pertinent part as follows:

> Whoever * * * knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity, shall be punished as provided in subsection (b).

5. Section 3237(a) of Title 18, United States Code, provides as follows:

> Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

> Any offense involving the use of the mails, transportation in interstate or foreign commerce, or the importation of an object or person into the United States is a continuing offense and, except as otherwise expressly provided by enactment of Congress, may be inquired of and prosecuted in any district from, through, or into which such commerce, mail matter, or imported object or person moves.

6. Rule 18, Federal Rules of Criminal Procedure, provides as follows:

> Except as otherwise permitted by statute or by these rules, the prosecution shall be had in a district in which the offense was committed. The court shall fix the place of trial within the district with due regard to the convenience of the defendant and the witnesses and the prompt administration of justice.

STATEMENT

1. Respondent Vickie Cabrales was charged in the Western District of Missouri in a three-count indictment. See App., *infra*, 17a-20a. Count I alleged that respondent in that district and elsewhere had conspired to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 371. App., *infra*, 18a-19a. Count II alleged that respondent in that district and elsewhere had conducted a financial transaction to avoid a transaction-reporting requirement, in violation of 18 U.S.C. 1956(a)(1)(B)(ii). App., *infra*, 19a-20a. Count III alleged that respondent in that district and elsewhere had engaged in a monetary transaction in criminally derived property of a value greater than $10,000, in violation of 18 U.S.C. 1957. App., *infra*,

20a. The indictment alleged that respondent had first deposited a monetary instrument in the amount of $40,000 with the AmSouth Bank of Florida, see *ibid.*, and had shortly thereafter made four separate withdrawals of $9,500 each from the same bank, see *id.* at 19a. The indictment also alleged that the funds in question were derived from "the knowing and intentional distribution of cocaine, a Schedule II controlled substance." *Id.* at 18a, 19a, 20a.

The money laundering offenses described in Sections 1956(a)(1)(B)(ii) and 1957(a) require proof that the funds in question were the product of "specified unlawful activity," and that the defendant knew the funds to have been unlawfully derived. See 18 U.S.C. 1956(a)(1) (statute applies only if the defendant "know[s] that the property involved in a financial transaction represents the proceeds of some form of unlawful activity," and the transaction "in fact involves the proceeds of specified unlawful activity"); 18 U.S.C. 1957(a) (statute applies to person who "knowingly engages or attempts to engage in a monetary transaction in criminally derived property of a value greater than $10,000 and is derived from specified unlawful activity"). The term "specified unlawful activity" is defined by 18 U.S.C. 1956(c)(7) and includes "the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act)." 18 U.S.C. 1956(c)(7)(B)(i). See also 18 U.S.C. 1957(f)(3) (for purposes of Section 1957, term "specified unlawful activity" has same meaning as in Section 1956).

2. Respondent moved to dismiss the indictment on the ground of improper venue. The case was referred to a magistrate judge, who recommended that re-

spondent's motion be denied as to Count I (the conspiracy charge) and granted as to Counts II and III. App., *infra*, 13a-16a. With respect to the money laundering charges, the magistrate judge explained that "[t]he deposit and withdrawals occurred in the State of Florida" and that "[n]o activity of money laundering is alleged to have occurred in Missouri." *Id.* at 14a. The magistrate judge concluded on that basis that venue on the money laundering charges was improper in the Western District of Missouri. In so doing, he rejected the government's contention that venue was proper because the drug sales from which the funds were derived had occurred in that district. See *ibid.*

The magistrate judge then addressed the conspiracy charge. He observed that "[v]enue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" App., *infra*, 14a (quoting *United States* v. *Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995), cert. denied, 116 S. Ct. 741 (1996)). Relying on the government's representation that respondent "was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in furtherance of the conspiracy," *id.* at 14a-15a, the magistrate judge recommended that respondent's motion to dismiss the indictment be denied with respect to Count I, *id.* at 15a.

The district court adopted the recommendation of the magistrate judge and ordered that respondent's motion to dismiss the indictment for improper venue be denied as to Count I and granted as to Counts II and III. App., *infra*, 10a-12a.

3. The court of appeals affirmed. App., *infra*, 1a-9a.

The court of appeals acknowledged that, "[w]ere the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against [respondent] would be appropriately venued in Missouri." App., *infra*, 6a n.4; see also *id.* at 3a ("The money [respondent] deposited, and later withdrew, was traceable to illegal drug sales which occurred in Missouri."). The court also recognized that "[u]nder 18 U.S.C. § 3237(a), 'continuing offenses' are deemed committed, and venue over those offenses is therefore proper, 'in any district in which such offense was begun, continued, or completed.'" *Id.* at 4a. The court concluded, however, that respondent "was not accused of a 'continuing offense'" because the financial transactions in which she engaged "began, continued, and were completed only in Florida." *Ibid.* In the court of appeals' view, "[t]hat the money came from Missouri is of no moment in this case, because [respondent] dealt with it only in Florida." *Ibid.* The court also stated: "Counts II and III include no act committed by [respondent] in Missouri. Nor does the government charge that [respondent] transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case." *Ibid.*

The court of appeals acknowledged that "some of the language in [*United States* v. *Beddow*, 957 F.2d 1330 (6th Cir. 1992)] might be broad enough to cover the fact situation" presented in the instant case.

App., *infra*, 5a.[1] The court concluded, however, that the cases were distinguishable on their facts. The court stated that in *Beddow*, "there was a money-laundering 'scheme' sufficient to confer venue on a different district from that in which the actual transactions took place," and "the defendant was convicted of involvement in each step of that conduct." *Id.* at 4a-5a. In the court of appeals' view, "[t]hat distinction explains why money laundering might have been a continuing offense in [*Beddow*] and not in" the instant case. *Id.* at 5a. The court of appeals further noted that the Seventh Circuit in *United States* v. *Sax*, 39 F.3d 1380, 1390 (1994), had relied on "*Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district." App., *infra*, 5a n.4. The court rejected that approach, however, and stated that "[t]o the extent *Sax* would produce such a holding, we respectfully disagree." *Ibid.*

---

[1] The court of appeals referred, in particular, to the following statement in the *Beddow* opinion:

> Under section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred. In the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan. Also, Count 4 involved travel that originated in Traverse City. We conclude that these acts were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a).

App., *infra*, 5a n.4 (quoting *Beddow*, 957 F.2d at 1336).

REASONS FOR GRANTING THE PETITION

In deciding where venue in a federal criminal prosecution may properly lie, the court must determine where the offense was committed. As this Court explained in *United States* v. *Anderson*, 328 U.S. 699, 704-705 (1946), "[t]he constitutional specification is geographic; and the geography prescribed is the district or districts within which the offense is committed. This may or may not be the place where the defendant resides." In deciding where an offense was committed, "the *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *Id.* at 703. "[W]here a crime consists of distinct parts which have different localities the whole may be tried where any part can be proved to have been done." *United States* v. *Lombardo*, 241 U.S. 73, 77 (1916).

Under those principles, venue was proper in this case: Because an essential element of the money laundering offenses defined by 18 U.S.C. 1956 and 1957 is that the funds in question must be derived from "specified unlawful activity," the district in which that unlawful activity occurred is a proper venue for a money laundering prosecution. The Eighth Circuit's contrary holding is incorrect, conflicts with decisions of four other courts of appeals, and threatens to complicate the efficient conduct of prosecutions under the federal money laundering statutes.

1. The Eighth Circuit's decision in this case conflicts with decisions of other courts of appeals. The Fourth, Sixth, Seventh, and Ninth Circuits have held that venue for money laundering offenses is proper in the district in which the funds were unlawfully generated, even if the financial transaction that con-

stitutes the laundering occurred wholly within another district. See *United States* v. *Heaps*, 39 F.3d 479, 482 (4th Cir. 1994); *United States* v. *Beddow*, 957 F.2d 1330, 1335-1336 (6th Cir. 1992); *United States* v. *Sax*, 39 F.3d 1380, 1390-1391 (7th Cir. 1994); *United States* v. *Angotti*, 105 F.3d 539, 544-545 (9th Cir. 1997).

The Sixth Circuit in *Beddow* offered the most extensive analysis of the question presented here. The court held that "money laundering offenses are cognizable under 18 U.S.C. § 3237(a) as continuing offenses." 957 F.2d at 1336. It observed that "[u]nder section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred." *Ibid.* It noted that "[i]n the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan." *Ibid.* The court concluded that the illegal acts that had generated the funds in question "were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a)." *Ibid.* The courts in *Heaps*, *Sax*, and *Angotti* followed *Beddow*'s analysis. See *Heaps*, 39 F.3d at 482; *Sax*, 39 F.3d at 1390; *Angotti*, 105 F.3d at 545.

In the instant case, the court of appeals attempted to distinguish *Beddow* on the grounds that *Beddow* involved "a money-laundering 'scheme,'" App., *infra*, 4a-5a, and that "[t]he defendant in *Beddow* was convicted of the crimes which produced the funds which were laundered," *id.* at 5a.[2] Although the defendant in

[2] The court of appeals also purported to distinguish *Beddow* by noting that "the money-laundering conduct in *Beddow* extended over more than one district," since the defendant in that case "had acquired [the tainted] funds in one district and transported them into another." App., *infra*, 5a. That observation was relevant to one of the money laundering counts in *Beddow*, which charged transportation of unlawfully acquired funds, in violation of 18 U.S.C. 1956(a)(2)(B). See *Beddow*, 957 F.2d at 1332, 1334 & n.2, 1336 (noting that "Count 4 involved travel that originated in Traverse City"). Nothing in the *Beddow* opinion suggests, however, that the Sixth Circuit regarded the defendant's transportation of the unlawfully acquired funds as relevant to the other money lanudering counts, which charged transactions consisting of transferring money in another district. As to those counts, the *Beddow* court relied on the fact that the unlawfully derived proceeds, though involved in a transaction in another district, were generated in the district in which the indictment was returned. See *ibid.*

Beddow was convicted of conspiracy to possess and distribute cocaine (at the same trial in which he was convicted of money laundering), see 957 F.2d at 1332, the Sixth Circuit's discussion of the venue issue contains no mention of that fact, see *id.* at 1335-1336. Rather, the court simply noted that "the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan," *id.* at 1336—a formulation that suggests that the Sixth Circuit deemed the identity of the persons engaged in the drug trafficking activity to be immaterial to the determination of proper venue for the money laundering charges.

The other courts of appeals that have addressed the question have not read *Beddow* as limited to cases in which the defendant in a money laundering prosecution is also convicted of the offenses that generated the tainted funds. Rather, those courts have construed *Beddow* as announcing a per se rule that money laundering prosecutions may always be brought in the district in which the laundered funds

were generated, and they have adopted the *Beddow* approach as so construed. See *Heaps*, 39 F.3d at 482 (citing *Beddow* with approval for proposition that "venue for a money laundering case is proper in any district in which the specified unlawful activity occurs"); *Sax*, 39 F.3d at 1390 ("Evidence shows that the funds used for the acts of money laundering * * * were the proceeds of [another person's] drug sales in the Central District of Illinois. This is sufficient to confer proper venue [in that district] under § 3237(a). See [*Beddow*]."); *Angotti*, 105 F.3d at 545 ("we follow the lead of the Sixth Circuit, which held in [*Beddow*] that money laundering is a continuing offense and that venue may lie in the district where the illegal money was obtained").[3]

2. The Fourth, Sixth, Seventh, and Ninth Circuits were correct in holding that venue in a money laundering prosecution under Section 1956 or 1957 is proper in the district in which the laundered funds were unlawfully generated, even when the laundering transactions took place elsewhere. An essential element of the criminal activity in those money laundering offenses is that the funds in question be shown to constitute the proceeds of "specified unlawful activity." 18 U.S.C. 1956(a)(1), 1957(a). For purposes of the relevant constitutional and statutory provisions, those offenses may therefore properly be said to have been committed in, *inter alia*, the district in which those proceeds were generated.

---

[3] The court of appeals in the instant case acknowledged that "*United States v. Sax* cites *Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district." App., *infra*, 5a. The court did not cite either *Heaps* or *Angotti*.

The venue rules governing money laundering prosecutions are similar, in this respect, to those that apply to conspiracy cases under 18 U.S.C. 371. The general conspiracy statute, while requiring proof of an overt act in furtherance of the conspiracy, makes clear that the requirement may be satisfied by proof of an overt act by a person other than the defendant. See 18 U.S.C. 371 ("If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both."). It is well established, moreover, that venue in a conspiracy prosecution is proper in any district in which an overt act in furtherance of the conspiracy was committed by *any* of the conspirators. See, *e.g.*, App., *infra*, 2a n.2; *Heaps*, 39 F.3d at 482; *United States* v. *Smith*, 918 F.2d 1551, 1557 (11th Cir. 1990); *United States* v. *Uribe*, 890 F.2d 554, 558 (1st Cir. 1989); *United States* v. *Meyers*, 847 F.2d 1408, 1411 (9th Cir. 1988). As in the conspiracy context, venue in a money laundering prosecution may properly lie in a district in which an essential element of the charged offense was committed by a person other than the defendant. The court of appeals therefore erred in concluding that the origin of the tainted money in Missouri was "of no moment in this case, because [respondent] dealt with it only in Florida." App., *infra*, 4a.

3. The question presented is of importance to the enforcement of the money laundering statutes. Federal prosecutors frequently wish to try money laundering counts together with charges for the substantive criminal offenses that generated the tainted

funds. Because the "specified unlawful activity" that generated the funds must be proved in the money laundering prosecution, that practice conserves the resources of the parties and the courts. The rule adopted by the Eighth Circuit would impair the efficient conduct of such prosecutions, at least in cases where the defendant charged with money laundering is not also charged with the "specified unlawful activity" that produced the funds. More generally, the government has a strong interest in venue rules that are clear, uniform, and easily administered, particularly because an appellate court's post-trial determination that venue was improper may serve as the basis for reversal of a criminal conviction. See, *e.g.*, *Travis* v. *United States*, 364 U.S. 631, 637 (1961).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

SETH P. WAXMAN
Acting Solicitor General
JOHN C. KEENEY
Acting Assistant Attorney General
MICHAEL R. DREEBEN
Deputy Solicitor General
MALCOLM L. STEWART
Assistant to the Solicitor General

OCTOBER 1997

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3080WM

UNITED STATES OF AMERICA, APPELLANT

v.

VICKIE S. CABRALES, APPELLEE

[Submitted Jan. 17, 1997
Decided March 24, 1997]

Before: RICHARD S. ARNOLD, Chief Judge, ROSS and BEAM, Circuit Judges.

RICHARD S. ARNOLD, Chief Judge.

Vickie Cabrales was charged with one count of conspiring to launder money and two counts of money laundering in the District Court for the Western District of Missouri. The District Court[1] dismissed the two counts of money laundering as improperly venued in that Court. The Government appeals the dismissal. We affirm.

---

[1] The Hon. Scott O. Wright, Jr., United States District Judge for the Western District of Missouri, acting on the recommendation of the Hon. William A. Knox, United States Magistrate Judge for the Western District of Missouri.

I.

Vickie Cabrales was charged with the following three offenses: conspiracy to avoid a transaction-reporting requirement (Count I), 18 U.S.C. §§ 371, 1956(a)(1)(B)(ii); conducting a financial transaction to avoid a transaction-reporting requirement (Count II), 18 U.S.C. § 1956(a)(1)(B)(ii); and engaging in a monetary transaction in criminally derived property of a value greater than $10,000 (Count III), 18 U.S.C. § 1957.

The District Court dismissed Counts II and III as improperly venued in Missouri, reasoning that none of the acts which constitutes money laundering occurred in Missouri.[2] The Government does not dispute that the acts which form the elements of those offenses occurred outside Missouri. It maintains, however, that the criminal offenses which necessitated the money laundering did occur in Missouri, and that venue was therefore proper in the Western District of Missouri under a "continuing offense" analysis.

[2] The Court did not dismiss Count I, the conspiracy charge, because overt acts did occur in Missouri. Venue is proper in a conspiracy case in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators. See *United States v. Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir.1995), *cert. denied*, —— U.S. ——, 116 S.Ct. 741, 133 L.Ed.2d 690 (1996). Count I is not part of this appeal. It remains pending in the District Court.

II.

The money-laundering charges are based on a series of deposits and withdrawals made by Cabrales at a Florida bank. The money Cabrales deposited, and later withdrew, was traceable to illegal drug sales which occurred in Missouri. The government asserts that since the drug conspiracy operated in Missouri, and Cabrales was "laundering" its profits, she can be tried in Missouri.

Both Rule 18 of the Federal Rules of Criminal Procedure and the Constitution require that a person be tried for an offense where that offense is committed.[3] "[T]he *locus delicti* must be determined from the nature of the crime alleged and the location of the act or acts constituting it." *United States v. Anderson*, 328 U.S. 699, 703, 66 S.Ct. 1213, 1216, 90 L.Ed. 1529 (1946).

The acts constituting money laundering for the purposes of this case are outlined in §§ 1956(a)(1) and 1957, which make it a crime to:

> knowing[ly] . . . conduct[ ] or attempt[ ] to conduct . . . a financial transaction which . . . involves the proceeds of specified unlawful activity . . . knowing that the transaction is designed in whole or in part

[3] Rule 18 provides, in pertinent part, that "prosecution shall be had in a district in which the offense was committed." Rule 18 echoes the command of Article III of the Constitution, which requires that, "Trial shall be held in the State where the said Crimes shall have been committed," and of the Sixth Amendment, which requires trial " by an impartial jury of the State and district wherein the crime shall have been committed." U.S. Const. art. III, § 2, cl. 3 & amend. VI.

> . . . to avoid a transaction reporting requirement under State or Federal law,

and to "knowingly engage[ ] or attempt[ ] to engage in a monetary transaction in criminally derived property that is of a value greater than $10,000 and is derived from specified unlawful activity."

Under 18 U.S.C. § 3237(a), "continuing offenses" are deemed committed, and venue over those offenses is therefore proper, "in any district in which such offense was begun, continued, or completed." As is clear from the statutes quoted above, Cabrales was not accused of a "continuing offense." She was charged with money laundering, for transactions which began, continued, and were completed only in Florida. That the money came from Missouri is of no moment in this case, because Cabrales dealt with it only in Florida. Counts II and III include no act committed by Cabrales in Missouri. Nor does the government charge that Cabrales transported the money from Missouri to Florida. Whether that would make a difference we need not decide in the present case.

III.

The government cites several cases which it believes should dictate a different result. For various reasons, they do not. But because some contain language which, if applied to Cabrales's case, might conflict with the result we now reach, we discuss them briefly.

In *United States v. Beddow*, 957 F.2d 1330 (6th Cir.1992), for example, money laundering was held cognizable under § 3237(a) as a continuing offense. The Court in *Beddow* held there was a money-

laundering "scheme" sufficient to confer venue on a different district from that in which the actual transactions took place. *Id.* at 1336. *Beddow*, however, presented different facts than the instant case. The defendant in *Beddow* was convicted of the crimes which produced the funds which were laundered, and had acquired those funds in one district and transported them into another. While some of the language in that case might be broad enough to cover the fact situation before us, we believe the facts that the money-laundering conduct in *Beddow* extended over more than one district, and that the defendant was convicted of involvement in each step of that conduct, distinguish the case. That distinction explains why money laundering might have been a continuing offense in that case and not in the one now before us.[4]

---

[4] The language to which we refer is the following:

> Under section 3237(a) venue is proper in any district where any part of the money laundering scheme occurred. In the present case, it is clear that the funds involved in both money laundering counts were acquired by selling drugs in the Western District of Michigan. Also, Count 4 involved travel that originated in Traverse City. We conclude that these acts were essential elements of the money laundering offenses and that they were sufficient to confer venue under section 3237(a).

957 F.2d at 1336.

United States v. Sax cites *Beddow* for the proposition that venue over money-laundering charges is proper in a given district if the underlying criminal conduct (which produced the funds) occurred in that district. 39 F.3d 1380, 1390 (7th Cir.1994). We note that the holding in *Beddow* appears to have depended on the combination of two facts: the underlying conduct occurred in the same district where the defendant began transportation of the funds which were to be laundered.

The government also cites *United States v. Hernando Ospina*, 798 F.2d 1570 (11th Cir.1986). In that case, two defendants were charged with concealing material facts from the IRS. The defendants argued venue was improper in the Southern District of Florida because the "concealment" resulted from the non-filing of currency transaction reports in Washington, D.C. The *Ospina* court rejected that argument, noting that, "it is undisputed that the scheme to conceal was formulated and virtually all the affirmative acts comprising that scheme were carried out in the Southern District of Florida." *Id.* at 1577. While the non-filing of the reports may have been the ultimate occurrence which kept information from reaching the IRS, the statute criminalizes the entire scheme. 18 U.S.C. § 1001, under which the defendants in *Ospina* were charged, makes it a crime to "knowingly and willfully . . . conceal[ ] or cover [ ] up by any trick, scheme, or device a material fact" in any matter within the jurisdiction of a federal agency. The statute explicitly criminalizes the scheme itself. The acts by the defendants in Florida were thus directly prohibited by the statute, and the crime was "committed" at least partly in Florida. Since no acts prohibited by 18 U.S.C. §§ 1956(a)(1)(B)(ii) and 1957 were committed by Cabrales in Missouri, *Ospina* is of no help to the government in the instant case.

Were the location of the underlying criminal conduct, standing alone, sufficient to confer venue on a district, the money-laundering charges against Cabrales would be appropriately venued in Missouri. To the extent *Sax* would produce such a holding, we respectfully disagree.

Finally, in *United States v. Chandler*, 66 F.3d 1460 (8th Cir.1995), a panel of our Court declined to reverse a conviction for accepting and receiving a gratuity in connection with the making of a loan because venue in the Eastern District of Arkansas was improper. In so doing, we affirmed the district court's refusal to sever those charges because they were "inextricably linked" to the other crimes with which the defendant was charged.

In *Chandler*, however, the trial jury found that venue was proper in the Eastern District of Arkansas. The location of the crime was disputed, and was therefore before the jury. We could have disturbed that verdict only if no reasonable jury could have reached the conclusion that one did. We held that the jury could reasonably have found that the crime was committed at least partly in the Eastern District of Arkansas. There is no factual ambiguity in the case now before us. Nowhere does the government allege that any part of the money-laundering transactions in question occurred outside Florida, and there is certainly no jury finding that they did.

Other cases provide better guidance for the case at bar. In *United States v. Swann*, 441 F.2d 1053 (D.C.Cir.1971), the Court reversed a district court holding that venue over a jury-tampering charge was proper in the District of Columbia when the jury was empaneled in a District of Columbia court but the tampering had occurred in Maryland. In reversing, the Court declined to view the crime as a "continuing offense," focusing its attention on the specific facts alleged and the crime charged:

> [t]he appellant's offense was not begun in one district and completed in another, or committed in more than one district. The offense condemned by the statute and charged in the indictment was begun, carried out and completed in the State of Maryland when the appellant "did injure the person of said Pauline Hawkins. . . ."

Id. at 1055.

We have adopted that approach in prior cases in this circuit as well. In *United States v. Brakke*, 934 F.2d 174 (8th Cir. 1991), defendant Brakke was accused of obstruction of justice for failing to comply with two federal marshals' requests that he pull over his vehicle and get out of it so it could be seized. The marshals began following Brakke in North Dakota, but did not signal him to stop until after he had crossed the state line into Minnesota. Consequently, Brakke did not refuse to comply until he was in Minnesota. The District Court for the District of North Dakota dismissed the charge for lack of venue, and our Court affirmed, holding:

> After reviewing the record . . . we can discern no support for the Government's contention that Brakke's obstructive conduct extended over two districts. . . . The only acts which formed the basis for the obstruction charge, Brakke's passive resistance to the marshalls' [sic] requests that he vacate his vehicle, occurred after Brakke had crossed into Minnesota. Accordingly, we agree with the district court's ruling that venue for the obstruction charges does not lie in the District of North Dakota.

Id. at 176-77 (footnote omitted).

IV.

The only acts which formed the basis for the money-laundering charges in the instant case consisted of banking transactions which Cabrales executed only in Florida. Under these facts and the analytical framework established in *Brakke*, the District Court correctly dismissed Counts II and III as improperly venued in Missouri. Accordingly, we affirm.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES, DEFENDANT

[Filed: June 28, 1996]

ORDER

On June 10, 1996, the United States Magistrate Judge recommended that defendant's motion to dismiss be granted as to Counts II and III and denied as to Count I. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

A conference was held in this case on June 24, 1996. A *de novo* review of the record,[1] including the exceptions filed by plaintiff on June 14, 1996, and defendant's exceptions filed on June 17, 1996, and

[1] Court proceedings, if any, are recorded by electronic recording equipment and the tapes are available for review by the court and counsel.

comments and arguments of counsel during the conference, convince the court that the recommendation of the Magistrate Judge is correct and should be adopted.

The parties advised the court of their intent to take an interlocutory appeal and requested a continuance of the trial setting to allow for appeal.

IT IS, THEREFORE, ORDERED that defendant's motion of May 2, 1996, to dismiss for lack of proper venue is denied as to Count I and granted as to Counts II and III. [16] It is further

ORDERED that the joint motion for continuance of this criminal action is granted and this criminal action is removed from the joint criminal jury trial docket which will commence July 1, 1996. It is further

ORDERED that this criminal action will be set for trial on the next joint criminal jury trial docket following resolution of the appeal. It is further

ORDERED that the pretrial conference will be held in this matter at a time to be announced later. It is further

ORDERED that, pursuant to 18 U.S.C. § 3161(h), the time between the date of this order and the next joint criminal jury trial docket following resolution of the appeal shall be excluded in computing the time within which the trial of this criminal action must commence. It is further

ORDERED that defendant's motion of June 13, 1996, for continuance is denied as moot. [26]

Dated this *28th* day of June, 1996, at Kansas City, Missouri.

/s/ SCOTT O. WRIGHT
SCOTT O. WRIGHT
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES, DEFENDANT

[Filed: June 10, 1996]

REPORT, RECOMMENDATION AND ORDER

Following the filing of this criminal action, it was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and W.D. Mo. R. 22.

On May 2, 1996, defendant filed a motion to dismiss for lack of proper venue. The Government responded in opposition to defendant's motion.

Proper venue is required by the United States Constitution and the Federal Rules of Criminal Procedure. Venue is proper in a district where the crime was committed and must be proven by the Government by a preponderance of the evidence. *United States v. Bascope-Zurita*, 68 F.3d 1057, 1062 (8th Cir. 1995); Fed. R. Crim. P. 18.

Defendant has been charged in three counts. Count I alleges defendant conspired to conduct a financial transaction involving the proceeds of a specified unlawful activity in violation of 18 U.S.C. § 371. Count II alleges defendant knowingly conducted and attempted to conduct a financial transaction involving the proceeds of unlawful activity in violation of 18 U.S.C. § 1956(a)(1)(B)(ii). Count III alleges defendant engaged or attempted to engage in a monetary transaction involving criminally derived property of a value of greater than $10,000.00 in violation of 18 U.S.C. § 1957. The overt acts set forth in the indictment relate to withdrawals of money from the AmSouth Bank of Florida on four dates in January, 1991. The indictment also indicates a $40,000.00 deposit made to the AmSouth Bank of Florida on January 22, 1991.

Counts II and III are money laundering charges. The deposit and withdrawals occurred in the State of Florida. No activity of money laundering is alleged to have occurred in Missouri. The Government's argument that venue is proper under 18 U.S.C. § 3237 because the transactions involved funds from drug sales in Missouri is not persuasive. Thus, defendant's motion to dismiss Counts II and III will be recommended granted.

Count I is a charge of conspiracy. "Venue is proper in a conspiracy case 'in any jurisdiction in which an overt act in furtherance of the conspiracy was committed by any of the conspirators.'" *Bascope-Zurita*, 68 F.3d at 1062. The Government asserts defendant was present in Missouri during the conspiracy, lived with a conspirator in Missouri, and participated in various activities in Missouri in

furtherance of the conspiracy. While the factual allegations of actions in Missouri in furtherance of the conspiracy are not set forth in the indictment, the Government is entitled to present the evidence to the jury. *Id.* at 1062 (venue is generally fact question for jury to decide when relevant facts to determining venue are disputed).

The parties are advised that because a courtroom is not available on June 24, 1996, this case will be tried commencing the second week of the trial docket and will begin on July 1, 1996, for a period not to exceed three days.

IT IS ORDERED that the trial in this case will commence on July 1, 1996, and shall not exceed three days. It is further

RECOMMENDED that defendant's motion of May 2, 1996, to dismiss for lack of proper venue be denied as to Count I and granted as to Counts II and III. [16]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within seven (7) days. If additional time is needed, a motion for an extension of time must be filed within seven (7) days. The motion should state the reasons for the request. *See Nash v. Black*, 781 F.2d 665, 667 (8th Cir. 1986) (citing *Thomas v. Arn*, 474 U.S. 140 (1985)); *Messimer v. Lockhart*, 702 F.2d 729 (8th Cir. 1983). Exceptions must be filed, **in duplicate**, pursuant to W.D. Mo. 3E. Failure to make specific written exceptions to this report and recommendation may result in a waiver of the right to appeal.

Dated this *10th* day of June, 1996, at Jefferson City, Missouri.

/s/ WILLIAM A. KNOX
WILLIAM A. KNOX
United States Magistrate Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

No. 95-04022-01-CR-C-5

UNITED STATES OF AMERICA, PLAINTIFF

v.

VICKIE S. CABRALES [DOB: 07/20/65], DEFENDANT

COUNT ONE:
18 U.S.C. § 371
NMT 5 Years
$250,000 Fine
Class D Felony
Supervised Release: NMT 3 Years

COUNT TWO:
18 U.S.C. § 1956(a)(1)(B)(ii)
NMT 20 Years
$500,000 Fine
Class C Felony
Supervised Release: NMT 3 Years

COUNT THREE:
18 U.S.C. § 1957
NMT 10 Years
$250,000 Fine
Class C Felony
Supervised Release: NMT 3 Years

$50 Special Assessment
(Each Count)

[Filed: Sept. 6, 1995]

INDICTMENT

THE GRAND JURY CHARGES:

COUNT ONE

That from on or about January 22, 1991, to on or about January 28, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly and intentionally combine, conspire, confederate and agree with others both known and unknown to the grand jury, to commit offenses against the United States, to wit, conducting and attempting to conduct a financial transaction affecting interstate and foreign commerce, that is, the withdrawal of United States currency from the AmSouth Bank of Florida, which involved proceeds of a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law and that while conducting and attempting to conduct such financial transaction knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, contrary to Title 18, United States Code, Section 1956(a)(1)(B)(ii); all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

In furtherance of this conspiracy and to effectuate and accomplish the unlawful objectives thereof, one or more of the conspirators committed the following overt acts, among others:

1. On or about January 22, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

2. On or about January 23, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

3. On or about January 24, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

4. On or about January 28, 1991, VICKIE S. CABRALES withdrew $9,500.00 in currency from the AmSouth Bank of Florida.

COUNT TWO

That on or about January 23, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, to wit, the withdrawal of $9,500 in United States Currency from the AmSouth Bank of Florida, which involved the proceeds of a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, knowing that the transaction was designed in whole or in part to avoid a transaction reporting requirement under federal law and that while conducting and attempting to conduct such financial transaction knew that the property

involved in the financial transaction, that is, the funds in the amount of $9,500 represented the proceeds of some form of unlawful activity; all in violation of Title 18, United States Code, Section 1956(a)(1)(B)(ii).

COUNT THREE

That on or about January 22, 1991, in the Western District of Missouri, and elsewhere, VICKIE S. CABRALES, defendant herein, did knowingly engage and attempt to engage in a monetary transaction, affecting interstate or foreign commence, in criminally derived property of a value greater than $10,000, that is, the deposit of a monetary instrument in the amount of $40,000, with the AmSouth Bank of Florida, such property having been derived from a specified unlawful activity, that is, the knowing and intentional distribution of cocaine, a Schedule II controlled substance, all in violation of Title 18, United States Code, Section 1957.

A TRUE BILL.

/s/ GLENDA M. CLAK
FOREPERSON OF THE GRAND JURY

/s/ E. EUGENE HARRISON
E. Eugene Harrison #26923
Assistant United States Attorney
Western District of Missouri

Dated: September 6, 1995

EEH:tas

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 96-3080WMJC

UNITED STATES OF AMERICA, APPELLANT,

v.

VICKIE S. CABRALES, APPELLEE

[Filed: June 12, 1997]

ORDER DENYING PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

The appellant's suggestion for rehearing en banc and appellant's petition for rehearing by the panel are denied.

June 12, 1997

Ordered Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit